

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 1116 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE D.P.BUCH

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the concerned : NO
Magistrate/Magistrates, Judge/Judges, Tribunal/Tribunals?

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SURAT DISTRICT CO.OP. MILK PRODUCERS UNION LTD.

Versus

JIMY ARCHSA ENGINEER

Appearance:

1. Civil Revision Application No. 1116 of 2000
MR KH BAXI for Petitioner No. 1-3
MRS KETTY A MEHTA for Respondent No. 1
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CORAM : MR.JUSTICE D.P.BUCH

Date of decision: 14/08/2002

ORAL JUDGEMENT

This is a revision application under section 115 of the Code of Civil Procedure, 1908 challenging the order dated 15.3.2000 passed by the learned second Joint Civil Judge (SD), Surat below application Exh.24 in

Special Civil Suit No.161/94 under which the trial court allowed the said application of the respondent and directed that the present petitioner shall deposit an amount of Rs. 2,45,006.15 before the court in accordance with the prayer made in the said application. The petitioner has challenged the said order saying that the learned Judge has committed serious illegality in passing such an order. It is prayed that this revision application be allowed and the said order of the trial court may be set aside. On receipt of the petition, notice was issued at the first instance and rule was issued thereafter. Mrs K A Mehta, learned Advocate appears for the respondent in response to the service of notice of rule.

2. I have heard the learned advocates for the parties. There is a preliminary objection as to the maintainability of the revision in view of the amendment in section 115 of the Code of Civil Procedure. On account of this amendment by Amending Act, 1999, learned Advocate for the respondent has contended that in view of the aforesaid amendment in section 115 of the Code, the present revision application is not maintainable. Therefore, the matter was heard on the said point. If we look at the amended provision of section 115 of the Code, it can clearly be divided into two parts. The first part would cover non-appealable order for final disposal of a civil proceeding. In the present case, we find that the order in question is an interim order and it is not a finally disposed of matter before the trial court. Simply, an order has been passed that the present petitioner should deposit a particular amount before the court. Even if that amount is deposited, the suit would not be disposed of. Therefore, the order in question does not finally dispose of the suit. Therefore, this revision application would not fall in the first part of section 115 of the CPC. So far as the second part is concerned, it is a proviso to sub-section (i) of section 115 of the Code, which reads as under:

(i) for the proviso, the following proviso shall be substituted, namely;

"Provided that the High Court shall not, under this section, vary or reverse any order made, or any order deciding an issue, in the course of a suit or other proceeding, except where the order, if it had been made in favour of the party applying for revision, would have finally disposed of the suit or other proceedings."

The aforesaid proviso makes it clear tht the revision application would be maintainable only on falsification of a test, had the order impugned in the revision, been passed in favour of the revisionist, it would have disposed of the suit or other proceedings. In the present case, we find that even if the order impugned in the revision was passed in favour of the petitioner, it would not have terminated the suit or other proceedings. In other words, even if the revision application is allowed, the order of this court would not terminate the suit or other proceedings. So far as the proviso is concerned, there is a mention about the suit or other proceedings. An attempt was made to argue that the application filed by the respondent before the trial court is also a proceeding and that would be terminated if the revision application is allowed. For this purpose, this Court has considered this aspect of the case in CRA No.863 of 2002 and, there it has been recorded that the "proceedings" as shown in the proviso is required to be treated to be an original independent civil proceeding. The application in question filed by the respondent before the trial court was simply a proceeding in the proceeding and, therefore, it would not be treated to be a proceeding for the purpose of the said proviso. In that view of the matter, when the order in question does not fall within four corners of section 115 of the Code as amended by the Amending Act of 1999. this revision application would not lie.

3. For the foregoing reasons, this revision application is ordered to be dismissed as not maintainable. Rule discharged. No order as to costs.

At this stage, learned Advocate for the petitioner submits that the petitioner may be given liberty to file appropriate petition under Article 227 of the Constitution of India. For that purpose, no permission is necessary. It may be open to the petitioner to file appropriate petition, if he desires so.

14.8.2002 [D P Buch, J.]

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